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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

WILLIAM LARRY WEAVER,)	CV 06-94-M-DWM
)	
Petitioner,)	
)	
vs.)	ORDER
)	
ATTORNEY GENERAL OF THE STATE)	
OF MONTANA and DAVID FRAZIER,)	
Warden of Hancock State Prison,)	
)	
Respondents.)	
)	

I. Introduction

Petitioner William Larry Weaver filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation on January 24, 2007. Petitioner timely objected on February 2, 2007. Petitioner therefore is entitled to de novo review of the record. 28 U.S.C. § 636(b)(1). Judge Lynch recommended denying Petitioner's second, third, and fourth

grounds for relief with prejudice. Because I agree with Judge Lynch's analysis, I adopt his Findings and Recommendation in full. The Parties are familiar with the procedural history and the factual background so they will not be restated here.

II. Analysis

Petitioner's second ground for relief alleges he was denied effective assistance of counsel during post-conviction proceedings. In his objections, Petitioner argues this ground for relief should not be denied because Petitioner relayed all relevant information to his post-conviction counsel and Petitioner should not be held responsible for counsel's failure to raise important issues. The constitution, however, does not guarantee individuals the right to an attorney in state post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752 (1991). Therefore, Petitioner's claim that his constitutional right to effective assistance of post-conviction counsel was violated fails to state a claim. Id.

Petitioner's third ground for relief alleges the State of Montana did not have jurisdiction to prosecute him because the crime occurred on federal land. Petitioner notes the crime occurred in Pattee Canyon, which Petitioner alleges is a federal game reserve protected by the federal government. As Judge Lynch correctly determined, however, Pattee Canyon is located in the Lolo National Forest and the State of Montana has jurisdiction

over crimes that occur on national forest land within the State's boundary. 16 U.S.C. § 480; Mont. Code Ann. § 2-1-210(2); see also United States v. Rafffield, 82 F.3d 611, 613 (4th Cir. 1996) (noting United States and State have concurrent jurisdiction over national forest lands).

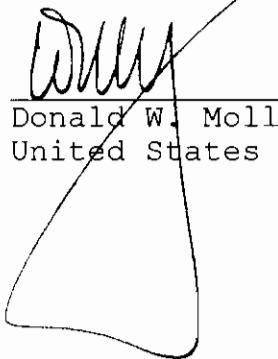
In his fourth ground for relief, Petitioner claims the State of Montana improperly extradited him from Georgia to face charges in Montana. Petitioner asserts he had a petition for writ of habeas corpus pending in Georgia at the time of his extradition and, under Georgia law, a person cannot be extradited while such an action is pending. Even if Petitioner's extradition was unlawful, Montana state courts would not have been deprived of jurisdiction to prosecute Petitioner for crimes committed in Montana. See Lascelles v. Georgia, 148 U.S. 537, 544 (1893). Therefore, Petitioner's unlawful extradition claim cannot be used to invalidate his conviction. Instead, the appropriate forum to challenge an alleged unlawful extradition is in an action brought pursuant to 42 U.S.C. § 1983. Harden v. Pataki, 320 F.3d 1289, 1300 (11th Cir. 2003). As Judge Lynch noted, Petitioner filed such an action and his claim was denied.

III. Conclusion

Accordingly, IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation are adopted in full. The second, third, and fourth grounds for relief identified in Petitioner's

Petition for Writ of Habeas Corpus are DENIED WITH PREJUDICE.

Dated this 23rd day of February, 2007.


Donald W. Molloy, Chief Judge
United States District Court